Supreme Court, U.S.
FILED
JAN 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1001

IN THE SUPREME COURT OF THE UNITED STATES
1985 Term

Wayne Louis Bohn and Sharon Anne Bohn, individually and as Natural Guardians and Guardians Ad Litem, Bradley L. Bohn, a minor and Wayne Arthur Bohn,

Plaintiffs-Petitioners,

vs.

County of Dakota; Shirley L. Utzinger, Director of Social Services, Dakota County Human Services Department; Beth Welshons, Worker, Child Protection Assessment Unit; Anthony A. Bibus, Supervisor, Child Protection Assessment Unit; Kenneth Malvey, Assistant County Attorney; Robert F. Carolan, County Attorney; Dakota County Human Services Board; John S. Voss, Chairman, Joseph A. Harris, Gerald E. Hollenkamp, Steven Loeding, and Russell L. Streefland,

Defendants-Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

There is no dispute that on May 31, 1982, Wayne Louis Bohn used force to subdue his son, Wayne Arthur Bohn. He did so by gripping the metal head of a hammer in his hand and swinging it backhand so that the wooden handle struck Wayne Arthur Bohn on the skull, causing him to fall to the ground. It is quite true that Wayne Arthur Bohn became very upset by this treatment and, after picking himself up off the ground, ran away to a neighbor's house. Thereafter the police were contacted, the police reported the matter to the Dakota County Department of Human Services, and an investigation was then conducted to determine whether there was sufficient evidence to substantiate an allegation of physical abuse of the child. All of these actions were taken pursuant to Minnesota Stat. §626.556.

When the allegation of physical abuse was substantiated, the Bohns were contacted and an offer of counseling services was made. When this offer was rejected, there was no further intrusion into the family unit of Petitioners initiated by any of the Defendants.

Within one week of the accident, Petitioners had retained their present counsel who wrote to Defendants and

specifically instructed them to have no further contact with his clients. Thereafter, Attorney Nathan initiated a broad range of unusual, and sometimes bizarre, procedures on behalf of his clients. For instance, Attorney Nathan prepared and executed a sworn affidavit alleging that his client, Wayne Louis Bohn, had physically abused his client, Wayne Arthur Bohn, to such an extent that the child had to be considered "neglected" within the meaning of Minnesota Statutes. Attorney Nathan filed this document with the Dakota County Family Court and then demanded that Dakota County proceed with the prosecution of these claims, so that Attorney Nathan could defend them. Dakota County declined to do so. The case was dismissed by the Family Court. This dismissal was affirmed on appeal to the Dakota County District Court and ultimately the Minnesota Supreme Court.

Petitioners initiated this action in United States District Court in August of 1983. Respondents timely moved the Minnesota District Court to dismiss the Complaint under F.R.C.P. Rule 12 for failure to state a claim upon which relief can be granted. Hearing on this motion occurred November 9, 1983, before the Honorable Diana E. Murphy. Judge Murphy acknowledged that the Complaint did not state a cause of action, but

declined to dismiss the Complaint at that time. Rather, it was ordered that an Amended Complaint be served with all causes of action clearly stated.

The Amended Complaint was served, and Respondents made a second motion to dismiss for failure to state a claim pursuant to F.R.C.P. Rule 12. In response to that motion, Petitioners sought leave to amend their Complaint yet a second time, and submitted specific allegations proposed to be included in the new Complaint. By Order dated May 1, 1984, Judge Murphy dismissed Plaintiffs' Complaint for failure to state a claim upon which relief can be granted. Judge Murphy's memorandum decision specifically referred to Petitioner's request for leave to amend a second time, and explained why the proposed amendment would not have changed her decision in any event.

Petitioners then appealed to the United States Circuit Court for the Eighth Circuit. Since the appeal was from a motion to dismiss upon the pleadings, the Eighth Circuit accepted all of the Petitioners' factual allegations as true in considering the appeal.

The Eighth Circuit conducted a detailed analysis of the pleadings and the record before the Trial Court. The Eighth

Circuit properly denied the Appellants' efforts to submit factual information never provided to the Trial Court to, in effect, try the case de novo at the Appellate level.[1] The Eighth Circuit Court of Appeals concluded that the Plaintiffs' allegations did not rise to the level of substantive due process violations, since the state statutes in question provided a proper balance between the privacy interests of the family unit and the state interest in protecting vulnerable children from abuse. The Eighth Circuit concluded that Appellants had failed to state an adequate procedural due process claim because the statutory procedures of the State of Minnesota provided for all necessary due process under the circumstances. Finally, the Eighth Circuit concluded that under the specific facts of this case, where Petitioners have been represented by counsel of their own choosing who has placed the matter on an adversarial basis virtually from the outset, and where Respondents remain willing, even now, to afford Petitioners with the due process

[1]Those efforts continue on this Petition. Factual allegations are made throughout the Petition which were never part of the record below. Thus, at page 13 of the Petition, reference is made to administrative proceedings relative to Petitioners which are not part of the record before the Trial or Appellate Courts. At page 38 Petitioners "mention" a newspaper article on appeal. Other examples exist which are far too numerous to recite here.

rights afforded by the statutes of the State of Minnesota, any misdirection or misstatement by Respondents as to the procedures available to Petitioners would not rise to a violation of due process.

ARGUMENT

Petitioners have failed to identify any of the considerations set forth in Rule 17 of the Rules of the Supreme Court of the United States as justifying their Petition for Certiorari. Certainly they have not identified any decision of another Federal Court of Appeals on the same matter which conflicts with the holding in this case. Petitioners have identified numerous cases talking about the circumstances under which due process requires a private citizen be given notice of appeal procedures which are available. Not one of those cases, however, deals with a situation in which the private citizen has, at all relevant times, been represented by licensed, and presumably competent, counsel of his or her own choosing. It is that crucial distinction which the Eighth Circuit Court of Appeals focused on for its decision under the unique facts of this case.

Furthermore, to the extent that Petitioners challenge the adequacy or intelligibility of the rules and regulations which provide procedures for appeals in this circumstance, the Eighth Circuit has specifically noted that those rules and regulations have been re-codified since the time of Petitioners' claims, and are publicly available and disseminated. (A-18).

Even assuming, without conceding, that these regulations were more difficult to interpret in their older form, that problem has now been addressed and corrected in the re-codification. The Eighth Circuit Court of Appeals was clearly satisfied with the form of those regulations as they presently exist.

CONCLUSION

The Petition for Writ of Certiorari in this case far exceeds the thirty page limitation contained at Rule 21.4 of the Rules of the Supreme Court of the United States. Furthermore, Petitioners have so failed to present their arguments with "accuracy, brevity and clearness" as to render it virtually impossible for Respondents to address their arguments with specificity. Rather than further burden the Court with a ninety page document analyzing all of the claims and arguments in the Petition, Respondents have attempted to identify the substantial arguments and show briefly why certiorari should be granted.

DATED: January 9, 1986.

Respectfully submitted,

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